

3:06 CV 714-3 Filed: 6/11/06

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

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| LLOYD THOMAS NOWELL, |) | CASE NO. 3:06 CV 714 |
| |) | |
| Plaintiff, |) | JUDGE DAVID A. KATZ |
| |) | |
| v. |) | |
| |) | <u>OPINION AND ORDER</u> |
| REGINALD WILKINSON, <u>et al.</u> , |) | |
| |) | |
| Defendants. |) | |

On March 29, 2006, plaintiff pro se Lloyd Thomas Nowell filed the above-captioned action under 42 U.S.C. § 1983 against Ohio Department of Rehabilitation and Correction (“ODRC”) Director Reginald Wilkinson, Marion Correctional Institution (“MCI”) Warden Christine Money, ODRC Assistant Chief Inspector Paul A. Shoemaker, MCI Institutional Inspector A.M. Brinkley, and MCI Corrections Officer Marshall Beverage. In the complaint, plaintiff alleges he was not properly secured with a seat belt in a prison transport van. He seeks “compensatory damages for pain and suffering and all stress related factors, and/or possible attorney fees, court costs, etc. for having to bring this action.” (Compl. at 7.)

Background

Mr. Nowell claims that he was being transported to the Ohio State University

Medical Center by MCI Corrections Officers on October 27, 2004. He indicates that Officers Marshall and Douglas were responsible for getting him to and from the appointment in a safe manner. He states he was placed in the transportation van cage where there are no seat belts. At some point during this trip, the van came to an abrupt stop to avoid a collision. Mr. Nowell alleges he fell against the steel cage.

Exhaustion of Administrative Remedies

A prisoner must allege and show that he has exhausted all available administrative remedies before filing a civil rights action in federal court to challenge the conditions of his confinement. 42 U.S.C. §1997e; Wyatt v. Leonard, 193 F.3d 876, 878 (6th Cir. 1999); Brown v. Toombs, 139 F.3d 1102, 1104 (6th Cir. 1998), cert. denied, 525 U.S. 833 (1998). To establish that he exhausted his remedies prior to filing suit, the prisoner must plead his claims with specificity and show that he has exhausted his administrative remedies with respect to each allegation against each defendant by attaching to the complaint a copy of the applicable administrative dispositions or, in the absence of written documentation, describing with specificity the administrative proceedings and their outcomes. Knuckles-El v. Toombs, 215 F.3d 640, 642 (6th Cir. 2000). The prisoner must exhaust each specific claim against each defendant named in the complaint to satisfy the exhaustion requirement. See Curry v. Scott, 249 F.3d 493, 504-05 (6th Cir. 2001). Moreover, the prisoner must specifically grieve allegations of retaliation or conspiracy against the defendants he names in his complaint. Garrison v. Walters, No. 00-1662, 2001 WL 1006271 (6th Cir. Aug. 24, 2001); Curry, 249 F.3d at 504-05. In the absence of such particularized averments concerning exhaustion, the action must be dismissed. Id.

Ohio Administrative Code § 5120-9-31 sets forth a three-step grievance procedure

for administrative remedies for inmates housed in Ohio prisons. Under this section, an inmate initiates the grievance procedure by filing an Informal Complaint Resolution form with the prison official whose area of responsibility is most related to the grievance. OHIO ADMIN. CODE § 5120-9-31(J)(1). If the inmate is dissatisfied with the informal complaint response, or if there has been no response to the complaint, the inmate may file a Notification of Grievance form with the Institutional Inspector. OHIO ADMIN. CODE § 5120-9-31(J)(2). If this second step does not provide satisfactory results, the inmate may file an appeal with the office of the Chief Inspector. OHIO ADMIN. CODE § 5120-9-31(J)(3). The Chief Inspector's written response to the inmate's appeal is the final decision on the grievance. Grievances against the Warden and Institutional Inspector must be filed directly to the Office of the Chief Inspector. OHIO ADMIN. CODE § 5120-9-31(L). The decision of the Chief Inspector or designee is final. OHIO ADMIN. CODE § 5120-9-31(L).

Plaintiff has not demonstrated that he has exhausted his administrative remedies for each claim against each defendant. He attaches a copy of an Informal Complaint Resolution form, a Notification of Grievance form, his Appeal to the Chief Inspector and the Chief Inspector's decision, all claiming he was injured as the result of unsafe driving and expressing his displeasure with the lack of seat belts in that van. While it appears that he completed the grievance process for his claims against Marshall Beverage, there is no indication that he submitted grievances and exhausted his administrative remedies for his claims against the remaining defendants.

The United States Sixth Circuit Court of Appeals adopted a "total exhaustion" requirement for prisoner complaints which fall within the parameters of 42 U.S.C. §1997e. See Bey v. Johnson, 407 F.3d 801 (6th Cir. 2005). Under this rule, if any claim in the complaint has not been exhausted, the entire complaint must be dismissed for failure to exhaust administrative

remedies. Bey, 407 F.3d at 806-07. The district court no longer has the option of dismissing just the unexhausted claims and proceeding with the claims that have been submitted through the relevant grievance process. Id. A prisoner whose “mixed” complaint was dismissed may either wait until all of his claims have been exhausted to file his action, or file a new action which contains only the exhausted claims. Id. at 808. Because Mr. Nowell has not demonstrated that he filed grievances for each claim against each defendant, the court is required by the rule of total exhaustion to dismiss the complaint in its entirety without prejudice.

Conclusion

Accordingly, this action is dismissed without prejudice pursuant to 42 U.S.C. §1997e. Further, the court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal from this decision could not be taken in good faith.¹

IT IS SO ORDERED.



DAVID A. KATZ
UNITED STATES DISTRICT JUDGE

¹ 28 U.S.C. § 1915(a) provides, in pertinent part:

An appeal may not be taken in forma pauperis if the trial court certifies that it is not taken in good faith.